

SERVICE DATE – MAY 9, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35661

GRAND TRUNK WESTERN RAILROAD COMPANY—ACQUISITION OF OPERATING
EASEMENT—CSX TRANSPORTATION, INC.

Digest:¹ This decision allows Grand Trunk Western Railroad Company to add two rail crossings to a rail operating easement that the Board authorized GTW to acquire in February. This Board authorization is subject to standard employee protective conditions.

Decided: May 7, 2013

As explained more fully in our decision served February 8, 2013 in this docket, on August 13, 2012, Grand Trunk Western Railroad Company (GTW) filed a petition for exemption under 49 U.S.C. § 10502 from the prior approval requirements at 49 U.S.C. §§ 11323-25 to acquire from CSX Transportation, Inc. (CSXT) an operating easement over approximately 2.1 miles of CSXT's Memphis Terminal Subdivision, between Leewood, Tenn., milepost 00F371.4, and Aulon, Tenn., milepost 00F373.4 (Leewood-Aulon Line or Line). As part of that easement acquisition, CSXT would retain local and overhead trackage rights over the Line. GTW explained that in exchange for acquiring that easement, GTW would convey to CSXT an easement over a GTW line in the Chicago, Ill., area.

In the February 8 decision, the Board granted GTW's petition for exemption, subject to standard employee protective conditions.² The exemption became effective on March 10, 2013, and, according to GTW's April 24 filing, the parties plan to close on the easement transfer as early as June 8, 2013.

On April 24, 2013, GTW filed what is essentially a request for a supplemental exemption. It explains that, in preparing for the closing, the parties identified a minor error in the description of the easement property in their transaction documents and in GTW's petition for exemption. The property description did not include, as intended, the crossings and

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² On the same day, we also granted authority for CSXT's easement acquisition in the Chicago area. See CSX Transp., Inc.—Acquis. of Operating Easement—Grand Trunk W. R.R., FD 35522, et al. (STB served February 8, 2013).

interlockings at the north (Leewood) and south (Aulon) ends of the easement. CSXT and GTW have thus modified their transaction³ to extend the easement for the Leewood-Aulon Line by adding the following:

1. The location of the railroad at-grade crossing, at or near Leewood, between CSXT at milepost 00F Z 371.26 and Illinois Central Railroad Company (IC) at milepost 387.85, including the underlying right-of-way extending 50 feet on either side of the centerline of the CSXT tracks to IC's existing right-of-way and 75 feet on either side of the centerline of the IC tracks, together with appurtenances (other than the CSXT tracks outside the crossing) and related interlocking (Leewood Crossing); and
2. The location of the railroad at-grade crossing, at or near Aulon, between CSXT at milepost 0NI 224.05 and IC at milepost 390.0, including the underlying right-of-way extending approximately 50 feet on either side of the centerline of the CSXT track to IC's existing right-of-way and 50 feet on either side of the centerline of the IC tracks, together with appurtenances (other than the CSXT tracks outside the crossing) and related interlocking (Aulon Crossing).⁴

Accordingly, GTW asks that the Board supplement its February 8 decision in this docket by adding the Leewood Crossing and the Aulon Crossing to the rail operating easement GTW has proposed to acquire and thus include those crossings within the exemption from regulation under 49 U.S.C. §§ 11323-25 that was granted in that decision. GTW asserts that this minor correction should not affect any of the findings, conclusions, or conditions of the Board's February 8 decision.⁵ GTW represents that CSXT concurs with these requests, and, as the parties plan to close on the easement as early as June 8, 2013, GTW requests expedited action by the Board.

DISCUSSION AND CONCLUSIONS

We will treat GTW's request as a petition for supplemental authority. As discussed below, we will exempt GTW's expansion of the operating easement over the additional crossings from the prior approval requirements of 49 U.S.C. §§ 11323-25.

As we explained in our February 8 decision, pursuant to 49 U.S.C. § 11323(a)(2), prior Board approval is required for a rail carrier to acquire and operate the property of another rail

³ Specifically, the parties have agreed to modify the description of the easement in their Leewood Easement Agreement. See CSX Transp., Inc.—Acquis. of Operating Easement—Grand Trunk W. R.R., FD 35522, Application, Vol. 2 at Exh. F (filed Aug. 13, 2012).

⁴ GTW included in its April 24 filing three maps that together illustrate the entire easement. The Leewood Crossing is shown in the red parallelogram at the top of Map 1; the Aulon Crossing is shown in the red parallelogram at the bottom of Map 3.

⁵ GTW's assertion, coupled with the parties' modification to the Leewood Easement Agreement, lead us to conclude that the local and overhead trackage rights CSXT is retaining on the Line extend over the Leewood Crossing and Aulon Crossing as well.

carrier. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation if it finds that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is limited in scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Here, an exemption from the prior approval requirements of 49 U.S.C. §§ 11323-25 is consistent with the standards of 49 U.S.C. § 10502. Detailed scrutiny of this supplemented acquisition is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101. As GTW notes, extending the easement to include the Leewood and Aulon Crossings does not affect the Board's conclusions in the February 8 decision. Furthermore, extending the easement will ensure that GTW, the primary user of the Leewood-Aulon Line, would have the full ability to exercise the control and responsibility for the crossings and interlockings in question and to dispatch the Line as intended by the parties. Therefore, the exemption would promote a safe and efficient rail transportation system, see § 10101(3), foster sound economic conditions, see § 10101(5), and encourage efficient management of railroads, see § 10101(9). Other aspects of the rail transportation policy would not be adversely affected by use of the exemption process.

Regulation of the acquisition of the additional sections is not needed to protect shippers from the abuse of market power. Shippers would continue to have the option of shipping via IC, GTW's affiliate, because IC would provide local and overhead service through the operating easement possessed by GTW. Shippers would also continue to be able to receive service from CSXT through the local and overhead trackage rights it is retaining over the Line, including the Leewood Crossing and Aulon Crossing. Given our market power finding, we need not determine whether extending the easement to include the two crossings is limited in scope.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of employees. Accordingly, as a condition to granting this exemption, the Board will impose the standard employee protective conditions established in New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979), as modified by Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation, Inc., 6 I.C.C.2d 799 (1990).

This transaction is exempt from the need to undertake an environmental review because it would not result in a significant change in carrier operations.⁶ Similarly, the transaction is exempt from the historic review process under 49 C.F.R. § 1105.8(b)(1) because, as discussed in the February 8 decision, there are no plans to alter railroad properties 50 years old or older, and GTW's expansion of the operating easement over the crossings is for continued rail operations; thus, further Board approval would be required to abandon or discontinue service over these additional sections of the Line.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

⁶ Generally, an increase of 3 or 8 trains per day depending on whether the area is in attainment under the Clean Air Act. See 49 C.F.R. §§ 1105.6(c)(2)(i), 1105.7(e)(4) and (5).

It is ordered:

1. Under 49 U.S.C. § 10502, supplementation of the transaction in this docket to include the Leewood Crossing and Aulon Crossing is exempted from the prior approval requirements of 49 U.S.C. §§ 11323-25, subject to the employee protective conditions in New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979), as modified by Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation, Inc., 6 I.C.C.2d 799 (1990).

2. Notice of this decision will be published in the Federal Register.

3. The exemption will become effective on June 8, 2013.

4. Petitions to stay must be filed by May 20, 2013. Petitions to reopen must be filed by May 29, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.